

MT LEGISLATIVE HISTORY

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AVAILABLE

Chapter 172 1989

Bill (H) 265 S \_\_\_\_\_

Original bill & hist. \_\_\_\_C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Jan 27 ✓C

Hearing Date(s) Mar 06 ✓C

Jan 30 ✓C

\_\_\_\_C

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Date Out Jan 30 ✓C

Mar 06 ✓C

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Did this bill originate in an interim committee? \_\_\_\_Yes \_\_\_\_No

Committee \_\_\_\_\_

Report \_\_\_\_\_

STATUS SHEET

51 LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

| BILL<br>NUMBER | ENTERED<br>COM.<br>DATE | DATE<br>CON-<br>SIDERED | OUT OF<br>COM. | DO PASS<br>DATE | DO NOT<br>PASS<br>DATE | DO<br>PASS AS<br>AMENDED<br>DATE | DO NOT<br>PASS AS<br>AMENDED<br>DATE | BE CON-<br>CURRED<br>IN<br>DATE | BE<br>NOT CON-<br>CURRED<br>IN<br>DATE | BE CON-<br>CURRED IN<br>AMENDED<br>DATE | BE NOT<br>CONCURRED<br>IN AS<br>AMENDED<br>DATE |
|----------------|-------------------------|-------------------------|----------------|-----------------|------------------------|----------------------------------|--------------------------------------|---------------------------------|----------------------------------------|-----------------------------------------|-------------------------------------------------|
| HB 201         | 1-17                    | 1-27                    | 1-27           | 1-27            |                        |                                  |                                      |                                 |                                        |                                         |                                                 |
| HB 248         | 1-18                    | 2-1                     | 2-1            | 2-1             |                        |                                  |                                      |                                 |                                        |                                         |                                                 |
| HB 260         | 1-18                    | 1-26                    | 1-26           |                 |                        | 1-26                             |                                      |                                 |                                        |                                         |                                                 |
| HB 264         | 1-18                    | 2-1                     | 2-6            |                 |                        | 2-6                              |                                      |                                 |                                        |                                         |                                                 |
| HB 265         | 1-18                    | 1-27                    | 1-30           |                 |                        | 1-30                             |                                      |                                 |                                        |                                         |                                                 |
| HB 286         | 1-19                    | 1-31                    | 1-31           |                 |                        | 1-31                             |                                      |                                 |                                        |                                         |                                                 |
| HB 291         | 1-19                    | 2-2                     | 2-17           |                 |                        | 2-17                             |                                      |                                 |                                        |                                         |                                                 |
| HB 292         | 1-19                    | 2-2                     | 2-2            | 2-2             |                        |                                  |                                      |                                 |                                        |                                         |                                                 |
| HB 295         | 1-20                    | 2-1                     | 2-9            |                 |                        | 2-9                              |                                      |                                 |                                        |                                         |                                                 |
| HB 310         | 1-20                    | 2-13                    | 2-13           |                 |                        | 2-13                             |                                      |                                 |                                        |                                         |                                                 |
| HB 312         | 1-20                    | 1-31                    | 1-31           | 1-31            |                        |                                  |                                      |                                 |                                        |                                         |                                                 |
| HB 313         | 1-20                    | 2-6                     | 2-9            |                 |                        | 2-9                              |                                      |                                 |                                        |                                         |                                                 |
| HB 316         | 1-23                    | 2-8                     | TABLED ON 2-9  |                 |                        |                                  |                                      |                                 |                                        |                                         |                                                 |
| HB 330         | 1-23                    | 2-9                     | TABLED ON 2-9  |                 |                        |                                  |                                      |                                 |                                        |                                         |                                                 |

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

Amendments and Votes: None.

Recommendation and Vote: No action taken. Close the hearing on HB 185.

HEARING ON HOUSE BILL 265

Presentation and Opening Statement by Sponsor: Rep.

Strizich, House District 41 stated that HB 265 is being presented on behalf of the Dept. of Family Services as a housekeeping measure. It is in response to confusion which has arisen partly due to amendments of the youth court act that was introduced by three separate bills during the 1987 Session. Alternatives for disposition of children who come before the youth court are not completely clear. This bill is to clarify the confusion of the amendments that were introduced in 1987. There is no intention of this bill to substantially effect the law itself.

List of Testifying Proponents and What Group They Represent:

Leslie Taylor, Dept. of Family Services  
Mona Jamison, Montana Juvenile Probation Association  
Howard Gipe, Flathead County Commissioner

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Leslie Taylor, in favor of HB 265 submitted before the Committee a written testimony accompanied by proposed amendments (EXHIBIT 10).

Mona Jamison, speaking on behalf of the Montana Juvenile Probation Association urged support of HB 265.

Howard Gipe asked of the Committee to look favorably upon the proposed legislation as it mainly serves as a housekeeping bill.

Questions From Committee Members: Rep. Boharski questioned page 3, lines 20-21. Regarding the part that has been added "does not obligate the Dept. without the Dept.'s approval". Rep. Boharski stated that it appears that the old subsection C is written as "does not obligate funding from the Dept. without the Dept.'s approval." Ms. Taylor stated that the discrepancy was her error and she would have no objection to returning the words

"funding from" to make the language identical.

Rep. Boharski continued by asking what is done with a youth that needs the Dept.'s services and the Dept. doesn't think that they have the money to take care of them? Does the youth have to be detained by the County because the Dept. doesn't think that they can afford to take care of them? Ms. Taylor stated that under the youth court act this positional section, the court can commit the youth to the Department. Once the court commits the youth to the Dept., the Dept. is responsible for any services provided.

Closing by Sponsor: In closing, Rep. Strizich stressed to the Committee that the concept is to remove duplicated language and reorganize specific sections. He hopes that with the passage of this bill it will help to clarify things for those people that work with the youth court act on a day-to-day basis.

#### DISPOSITION OF HOUSE BILL 265

Motion: None.

Discussion: None.

Amendments and Votes: None.

Recommendation and Vote: No action taken. Close the hearing on HB 265.

#### HEARING ON HOUSE BILL 232

Presentation and Opening Statement by Sponsor: Rep. Dave Brown, House District 72 stated that the proposed bill is an attempt to raise the fees to a level in the Clerk of the Courts Office to help pay actual cost. Page 1 clarifies that a petition for legal separation will have a fee of \$100.00 which is the same amount as a petition for a dissolution of marriage. This changes a clarification as well as a remedy a problem which has inadvertently resulted from the present fee schedule. The complexity of legal separation requires as much work to the judicial system as well as the judge, yet the fee schedule presently provides for a fee of \$60.00. There is an ability to convert the legal separation petition to a petition for dissolution at

## DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 27, 1989

| NAME                           | PRESENT | ABSENT | EXCUSED |
|--------------------------------|---------|--------|---------|
| REP. KELLY ADDY, VICE-CHAIRMAN | X       |        |         |
| REP. OLE AAFEDT                | X       |        |         |
| REP. WILLIAM BOHARSKI          | X       |        |         |
| REP. VIVIAN BROOKE             | X       |        |         |
| REP. FRITZ DAILY               | X       |        |         |
| REP. PAULA DARKO               | X       |        |         |
| REP. RALPH EUDAILY             | X       |        |         |
| REP. BUDD GOULD                | X       |        |         |
| REP. TOM HANNAH                | X       |        |         |
| REP. ROGER KNAPP               | X       |        |         |
| REP. MARY McDONOUGH            |         |        | X       |
| REP. JOHN MERCER               | X       |        |         |
| REP. LINDA NELSON              | X       |        |         |
| REP. JIM RICE                  | X       |        |         |
| REP. JESSICA STICKNEY          | X       |        |         |
| REP. BILL STRIZICH             | X       |        |         |
| REP. DIANA WYATT               | X       |        |         |
| REP. DAVE BROWN, CHAIRMAN      | X       |        |         |
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## DEPARTMENT OF FAMILY SERVICES DATE Jan. 27, 1989

HB 265-Rep. Strizich



STAN STEPHENS, GOVERNOR

(406) 444-5900

## STATE OF MONTANA

P.O. BOX 8005  
HELENA, MONTANA 59604TESTIMONY IN SUPPORT OF HB 265  
REVISION AND REORGANIZATION OF DISPOSITIONAL OPTIONS  
UNDER THE YOUTH COURT ACTSubmitted by Leslie Taylor  
Legal Counsel for the Department of Family Services

The Department requested this bill to revise and reorganize the dispositional alternatives under the Youth Court Act because of the confusion which has arisen regarding this section of the law. In the last legislative session, Section 41-5-523, MCA, was amended by three different bills. As a result, the dispositional alternatives available to the court were not clear. In an effort to clarify what the alternatives are and to provide further explanation of some of the sections, the Department has proposed HB 265. The bill is not intended to produce any major changes. It is intended solely to provide clarification and reorganization of the existing sections.

On page 1, the bill clarifies that the court can commit the youth to the Department if the youth is in need of placement outside of his home. This is consistent with existing practice and the intent of the amendments made in the last legislative session.

On page 2, the term "youth correctional facility" is substituted for "physical confinement in an appropriate facility." The Youth Court judge may specify placement in a youth correctional facility as part of his order. Since the Department has interpreted this section to mean the youth correctional facilities, the bill changes the wording to be more specific and to avoid confusion.

On page 3, duplicative language under subsection (c) is removed and combined with subsection (i). A new paragraph (2) is inserted which incorporates all the restrictions on the Department in determining placement. Rather than having these restrictions sprinkled throughout the section, they are combined together in the new subsection (2).

Pages 5 and 6 contain minor changes, including removal of the Order of Commitment. The Order of Commitment in the code is not consistent with the existing law because it fails to specify whether the youth is a youth in need of supervision or a delinquent youth and contains only the finding that the youth "is a suitable person to be committed to the Department of Family

Services." Since most judges fashion their own orders in such cases anyway, the Order need not be contained in the statute.

The bill will better clarify the options available to the Youth Court and the Department in determining the appropriate disposition of troubled youths. By removing duplicative material, reorganizing the sections and clarifying the existing ambiguities, it is hoped the bill will result in a law that is more understandable to the people who work with it on a daily basis.

## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 265DATE JAN. 27, 1989SPONSOR REP. STRIZICH

| NAME (please print) | RESIDENCE              | SUPPORT | OPPOSE |
|---------------------|------------------------|---------|--------|
| Howard W Gipe       | Flathead Co.           | ✓       |        |
| Mona Jamison        | Helena                 | ✓       |        |
| Kesler Taylor       | Dept of Family Service | ✓       |        |
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



can blame it on out of state insurance companies because this is their own company. It is really based on how much benefits they pay out and they have to tighten up the lines. It is not improper to say that in light of circumstances in Montana, if a person is injured they are going to take care of until maximum healing. If they are injured again on the job, then they will be taken care of. If they get injured off the job, hopefully they will have their own health program and it will be their responsibility. Unless they do tighten it up, it is just going to continue to get away from them. It is already \$157 million in the red.

Rep. Rice commented that Workers' Compensation was never intended to be an insurance program for all possibilities of injury. That is why he feels everybody who works in the system came in and supported this bill, as well as SRS, the ALFCIO, Jim Murry and the insurers. Mr. Murry knows as well as the other people involved that Workers' Compensation does not cover all accidents and all possibilities. That is one of the reasons they are getting into trouble. All this bill is doing is limiting the coverage for the original intention of the Workers' Comp program.

A vote was taken on the proposed amendments offered by Rep. Smith (EXHIBIT 5) and PASSED unanimously.

Recommendation and Vote: Rep. Eudaily moved HB 155 DO PASS AS AMENDED, motion seconded by Rep. Knapp. A Roll Call Vote was taken and CARRIED with 10 voting aye and 6 voting nay.

#### DISPOSITION OF HOUSE BILL 265

Motion: A DO PASS motion was made by Rep. Strizich, motion seconded by Rep. Wyatt.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Eudaily moved to amend page 3, line 20, following "obligate" insert funding from. Motion was seconded by Rep. Gould and PASSED unanimously.

Rep. Boharski stated that he has an overall concern with this bill and has a real problem with the Dept. of Family Services. It appears to him that the local district courts are trying to take care of legal problems with placing youths. Then there is the State Dept. of Family Services telling them what they can and cannot do at the discretion of the funds that they want to allow. It seems to him that the county is going to be liable for expenses. The amendment just makes it more clear as to how messed up this bill really is.

Rep. Strizich commented that HB 265 does not affect current law in terms of substantive affect. The philosophy that was put forward when the new Dept. of Family Services was created

was that the courts were out of line. The probation office in conjunction with the courts were mandating a lot of excessive expenses on the state. To address that problem they worked on the new Dept. of Family Services last session and the philosophy was that the placement recommendations would be made to the Dept. and then it would be the Dept.'s responsibility to fund appropriate kinds of placement opportunities for youth. This bill does not change any of that. It clarifies it to the extent that it does describe what the original legislation was intended to do.

A vote was taken on the amendment and CARRIED unanimously.

Recommendation and Vote: A DO PASS AS AMENDED motion was made by Rep. Strizich and seconded by Rep. Wyatt. Motion CARRIED unanimously.

#### DISPOSITION OF HOUSE BILL 70

Motion: Rep. Addy moved HB 70 DO PASS, motion seconded by Rep. Mercer.

Discussion: None.

Amendments, Discussion and Votes: Rep. Addy moved HB 70 be amended (EXHIBIT 6), motion seconded by Rep. Eudaily.

Rep. Addy stated that throughout the bill (EXHIBIT 6, informal draft of proposed amendments), there are a number of references to the words "concealed weapon" and/or "pistol". With some minor exceptions they have amended the bill to refer uniformly to the word "handgun". Rep. Addy walked the Committee through each of the amendments and the motion was seconded by Rep. Darko.

Rep. Gould made reference to the hunting license in section 6 of page 1. For someone who actively pursues the sport of fishing, why couldn't they be allowed to carry a handgun as well? Rep. Addy stated that it could be inserted in with the hunting provision, but would want to make sure that it is in wilderness or non-congested areas.

Rep. Mercer stated that it might be easier if the Committee just adopts the proposed amendments with the understanding that they will return and adjust them accordingly.

Rep. Daily questioned Rep. Addy as to the intent of page 3, line 17. Does that mean if a person has been charged with an offense, even though they haven't been adjudicated, the judge could still deny them the permit? Rep. Addy stated that in insert B, under prosecution, for any of those other offenses it would seem pretty far fetched that a sheriff would know that somebody is about to stand trial for aggravated assault. They would still be required to issue them a permit to carry a concealed weapon pending trial.

## DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 30, 1989

| NAME                           | PRESENT | ABSENT | EXCUSED |
|--------------------------------|---------|--------|---------|
| REP. KELLY ADDY, VICE-CHAIRMAN | X       |        |         |
| REP. OLE AAFEDT                | X       |        |         |
| REP. WILLIAM BOHARSKI          | X       |        |         |
| REP. VIVIAN BROOKE             | X       |        |         |
| REP. FRITZ DAILY               | X       |        |         |
| REP. PAULA DARKO               | X       |        |         |
| REP. RALPH EUDAILY             | X       |        |         |
| REP. BUDD GOULD                | X       |        |         |
| REP. TOM HANNAH                |         |        | X       |
| REP. ROGER KNAPP               | X       |        |         |
| REP. MARY McDONOUGH            | X       |        |         |
| REP. JOHN MERCER               | X       |        |         |
| REP. LINDA NELSON              | X       |        |         |
| REP. JIM RICE                  | X       |        |         |
| REP. JESSICA STICKNEY          | X       |        |         |
| REP. BILL STRIZICH             | X       |        |         |
| REP. DIANA WYATT               | X       |        |         |
| REP. DAVE BROWN, CHAIRMAN      | X       |        |         |
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STANDING COMMITTEE REPORT

January 30, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 265 (first reading copy -- white) do pass as amended.

Signed:   
Dave Brown, Chairman

And, that such amendments read:

1. Page 3, line 20.

Following: "obligate"

Insert: "funding from"

Senator Jenkins said the child molestation bills were for "under 18" and he wondered why this bill said "under 16". John thought the (molestation) statutes did provide for "under 16," rather than 18. The reason for the different language was for a case where the victim was 15 and the offender was 17, which would not result in a felony sexual assault charge.

Senator Crippen asked if Senator Jenkins was referring to the statute of limitations bills on incest. He said yes.

Senator Jenkins asked about the "age of consent." John said it was 14 for some offenses and 16 for others.

Senator Yellowtail said he understood that, with the provisions of the bill, the treatment would be given. John said that there has to be a sentencing that would afford the opportunity of receiving the 2 or 3 years of treatment necessary for the containment of the problem. He said that sex offenders are never cured, but can be "contained." They need to be seen periodically after treatment for reinforcement. Senator Beck agreed that his understanding of the program at the prison was a minimum of 2 years.

Valencia said she wanted to clarify that, currently, the sexual assault statute is 16 years of age. The bill would be consistent with that, she said.

Closing by Sponsor: Rep. Rice closed.

#### DISPOSITION OF HOUSE BILL 189

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Halligan MOVED that HB 189 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

#### HEARING ON HOUSE BILL 265

Presentation and Opening Statement by Sponsor:

Representative Bill Strizich, Great Falls, District 41, opened the hearing. He said the bill's purpose was to revise and reorganize options for disposition of

troubled youths. The bill was requested by the Department of Family Services, he said. It responds to confusion of amendments to the youth court act that were enacted during the last session. The bill is to clean up the verbosity and better clarify the statute.

List of Testifying Proponents and What Group they Represent:

Leslie Taylor, Department of Family Services  
Mona Jamison, Montana Juvenile Probation Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Leslie Taylor presented written testimony (Exhibit 6).

Mona Jamison supported the bill.

Questions From Committee Members: Senator Mazurek asked if any of the youth court judges had reviewed the bill. Leslie said she had not sent it to any youth court judges, but had sent it to county attorneys and to probation officers. They had no problems with it.

Senator Mazurek asked why passage on approval. She thought because it wasn't an excessive amount of change, it might as well be that way.

Closing by Sponsor: Representative Strizich closed.

DISPOSITION OF HOUSE BILL 265

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Pinsoneault MOVED that HB 265 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

ROLL CALLJUDICIARYCOMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-6-89

| NAME                | PRESENT | ABSENT | EXCUSED |
|---------------------|---------|--------|---------|
| SENATOR CRIPPEN     | ✓       |        |         |
| SENATOR BECK        | ✓       |        |         |
| SENATOR BISHOP      | ✓       |        |         |
| SENATOR BROWN       |         |        | ✓       |
| SENATOR HALLIGAN    | ✓       |        |         |
| SENATOR HARP        | ✓       |        |         |
| SENATOR JENKINS     | ✓       |        |         |
| SENATOR MAZUREK     | ✓       |        |         |
| SENATOR PINSONEAULT | ✓       |        |         |
| SENATOR YELLOWTAIL  | ✓       |        |         |
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Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 265 (third reading copy -- blue), respectfully report that HB 265 be concurred in.

Sponsor: Strizich (Halligan)

BE CONCURRED IN

Signed: B. D. Crispin  
Bruce D. Crispin, Chairman

4/11/89



DEPARTMENT OF FAMILY SERVICES



STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005  
HELENA, MONTANA 59604

TESTIMONY IN SUPPORT OF HB 265  
REVISION AND REORGANIZATION OF DISPOSITIONAL OPTIONS  
UNDER THE YOUTH COURT ACT

Submitted by Leslie Taylor  
Legal Counsel for the Department of Family Services

The Department requested this bill to revise and reorganize the dispositional alternatives under the Youth Court Act because of the confusion which has arisen regarding this section of the law. In the last legislative session, Section 41-5-523, MCA, was amended by three different bills. As a result, the dispositional alternatives available to the court were not clear. In an effort to clarify what the alternatives are and to provide further explanation of some of the sections, the Department has proposed HB 265. The bill is not intended to produce any major changes. It is intended solely to provide clarification and reorganization of the existing sections.

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person to be committed to the Department of Family ~~Be~~ NO ices." HB265  
Since most judges fashion their own orders in such cases anyway,  
the Order need not be contained in the statute.

The bill will better clarify the options available to the Youth Court and the Department in determining the appropriate disposition of troubled youths. By removing duplicative material, reorganizing the sections and clarifying the existing ambiguities, it is hoped the bill will result in a law that is more understandable to the people who work with it on a daily basis.

DATE \_\_\_\_\_

Senate Judiciary

# VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)